



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF SHAMRAY v. UKRAINE

(Application no. 74096/01)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shamray v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 10 July 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 74096/01) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Oleksandr Viktorovych Shamray (“the applicant”), on 22 March 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mrs Z. Bortnovska, succeeded by Mr Y. Zaytsev.

3. On 7 July 2003 the Court decided to communicate the complaint concerning the non-enforcement of the final judgments given in the applicant's favour to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1954 and lives in Yenakiyeve.

5. In 1999 the applicant instituted civil proceedings against his former employers, the State-owned mines “Yenakiyivska” and “Poltavska”, seeking compensation for damage to his health.

6. On 12 February 1999 the Yenakiyeve Court (*Єнакіївський міський суд*) ordered the mine “Poltavska” to pay the applicant a lump sum of

10,922.79 hryvnias (UAH)¹. On 22 March 1999 the Donetsk Regional Court (the “Regional Court”; *Донецький обласний суд*) amended this judgment, having additionally awarded the applicant arrears in monthly allowances for the period of October 1996 – October 1999.

7. On 22 March 1999 the Regional Court ordered the mine “Yenakiyivska” to pay the applicant the total UAH 10,263.24² in monthly allowance arrears.

8. After the above decisions had become final and the enforcement proceedings had been instituted in their respect, the applicant unsuccessfully requested the judicial authorities to re-open the proceedings, seeking higher compensation.

9. According to the Government, the judgments debts were fully paid to the applicant in several instalments, last payments having been made in September 2003. To this end, the Government presented copies of the decisions to terminate the enforcement proceedings taken on 19 and 26 September 2003 by the Bailiffs (*Відділ Державної виконавчої служби Єнакіївського міського управління юстиції*) in respect of the mines “Yenakiyivska” and “Poltavska” respectively.

10. The applicant maintained that he had received only a part of the judgments debt due to him. He did not, however, specify the outstanding amount and provided no information on whether he had challenged the Bailiffs' decision to terminate the enforcement proceedings.

11. After the case had been communicated to the Government, the applicant additionally submitted a number of documents concerning his other disputes and proceedings against various parties, however, he neither described the relevant facts, nor articulated any separate complaints in their respect.

II. RELEVANT DOMESTIC LAW

12. A description of the relevant domestic law can be found in *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

1. 2,517 euros (EUR).

2. EUR 2,365.

THE LAW

I. COMPLAINTS CONCERNING THE NON-ENFORCEMENT OF THE JUDGMENTS

13. The applicant complained about the State authorities' failure to enforce the judgments of 12 February and 22 March 1999 in due time. He invoked Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which provide, insofar as relevant, as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” Article 1 of Protocol No. 1

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest”

A. Admissibility

1. The applicant's victim status

14. The Government submitted that, since the decisions at issue had been enforced, the applicant can no longer be considered a victim of a violation of his rights under Article 6 § 1. They therefore proposed that the application be declared inadmissible.

15. The applicant disagreed. In particular, he argued that the decisions had not been enforced in full.

16. The Court observes that it is not clear from the parties' submissions whether these decisions have been enforced in full. However, it assumes that the decisions were fully enforced by September 2003, given the fact that the Bailiffs established that the amounts due under the decisions had been paid to the applicant in full, which the applicant did not contest at the national level.

17. However, the fact that the decisions in the applicant's favour were enforced does not deprive the applicant of his victim status in relation to the period during which the court decisions in his favour remained unenforced (see *e.g. Gavrilenko v. Ukraine*, no. 24596/02, §§ 18-19, 20 September 2005). Accordingly, the Court rejects the Government's preliminary objection.

2. Exhaustion of domestic remedies

18. The Government further raised objections regarding exhaustion of domestic remedies similar to those which the Court has already dismissed in a number of similar cases concerning the non-enforcement of the court judgments (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003 and *Trykhliv v. Ukraine*, *Trykhliv v. Ukraine*, no. 58312/00, §§38-43, 20 September 2005). The Court considers that these objections must be rejected for the same reasons.

3. Conclusion

19. The Court concludes that the applicant's complaints about the delay in enforcement of the final judgments given in his favour raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this part of the application inadmissible.

B. Merits

20. In their observations on the merits of the case, the Government contended that there had been no violation of the applicant's Convention rights.

21. The applicant disagreed.

22. The Court notes that the two judgments in the applicant's favour were not enforced for four and a half years.

23. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in a number of similar cases (see, for instance, *Sokur v. Ukraine*, cited above, §§ 36-37 and *Sharenok v. Ukraine*, no. 35087/02, §§ 37-38, 22 February 2005).

24. Having examined all the material in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

25. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

26. The Court does not find it necessary in the circumstances to examine under Article 13 of the Convention the same complaint as under Article 6 § 1.

II. OTHER COMPLAINTS

27. The applicant also complained under Article 14 of the Convention that certain other litigants obtained higher awards in similar cases and under Article 6 § 1 that the conduct of the judicial authorities handling his requests for re-opening of the proceedings was unlawful. Finally, the applicant invoked Article 3 of the Convention to the facts of the present case.

28. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, insofar as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

29. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

31. The applicant claimed penalty interest, lost profits and various other sums in respect of pecuniary damage. He did not specify the total amount of his claim, although he presented intermediate calculations under various heads, which appear to amount to several hundred thousands euros. He also claimed UAH 1,000,000 (EUR 161,400) in respect of non-pecuniary damage.

32. The Government contested these claims.

33. Having regard to the applicant's unclear submissions regarding the pecuniary damage and to the fact that the judgments given in his favour have been fully enforced, the Court rejects this claim. On the other hand, the Court takes the view that the applicant must have suffered some non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,800 in this respect.

B. Costs and expenses

34. The applicant also claimed EUR 3,150 for the costs and expenses and presented copies of phone and medical bills, receipts for typing, copying, and postal services and other documents issued between 1996 and 2004.

35. The Government submitted that the applicant's claims were exorbitant and unsubstantiated.

36. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

37. The Court considers that these requirements have not been met in the instant case. It notes that the applicant's submissions do not specify his costs incurred in connection with the violation found. However, the applicant must have incurred some costs and expenses in connection with his Convention complaints. Regard being had to the information in its possession and to the above considerations, the Court finds it reasonable to award the applicant EUR 50 for costs and expenses (see e.g., *Belanova v. Ukraine*, no. 1093/02, § 41, 29 November 2005).

C. Default interest

38. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the delay in enforcement of the judgments admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 Protocol No. 1 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,850 (one thousand eight hundred fifty euros) in respect of non-pecuniary damage and costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President